

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KRISTINA HANSEN,

Plaintiff,

DECISION AND ORDER

Case No. 17-CV-6143-FPG-JWF

v.

WATKINS GLEN CENTRAL SCHOOL DISTRICT and
THOMAS J. PHILLIPS, Individually and as Superintendent
of the Watkins Glen Central School District,

Defendants.

INTRODUCTION

Plaintiff commenced this action in March 2017 and was represented by Attorney Jacob McNamara. ECF No. 1. On September July 15, 2019, the Court granted Defendants' Motion for Summary Judgment. ECF No. 45. Plaintiff, acting *pro se*, filed a Notice of Appeal and a Motion for Leave to Appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915 and Rule 24 of the Federal Rules of Appellate Procedure. ECF Nos. 47, 48. The Court denied the motion without prejudice for failure to comply with the procedural requirements. ECF No. 50. Plaintiff filed a renewed motion, ECF No. 51, which is now before the Court. For the reasons stated below, Plaintiff's Motion is GRANTED.

LEGAL STANDARD

I. Procedural Requirements

Rule 24 provides, in relevant part, that "a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court." Fed. R. App. P. 24(a)(1). The motion to appeal *in forma pauperis* must include an affidavit that: "(A) shows in the detail

prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." *Id.* at 24(a)(1)(A)-(C). "If the district court denies the motion, it must state its reasons in writing." *Id.* at 24(a)(2).

II. *In Forma Pauperis* Determination

Plaintiff bears the burden of establishing his or her indigence. *See Potnick v. E. State Hosp.*, 701 F.2d 243, 244 (2d Cir. 1983). "[O]ne [need not] be absolutely destitute to enjoy the benefit" of the *in forma pauperis* statute. *Adkins v. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). Rather, "[a]n affidavit to proceed *in forma pauperis* is sufficient if it indicates that one cannot, because of his poverty, afford to pay the costs of litigation and still provide himself and his dependents with the necessities of life." *Kilichowski v. Hocky*, No. 99-CV-2874 JG, 1999 WL 504285, at *1 (E.D.N.Y. July 5, 1999). "If it appears that an applicant's access to [] court has not been blocked by his financial condition; rather [that] he is merely in the position of having to weigh the financial constraints posed if he pursues [his position] against the merits of his case, then a court properly exercises its discretion to deny the application." *Fridman v. City of New York*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002) (citing *Sears, Roebuck and Co. v. Sears*, 686 F. Supp. 385, 385 (N.D.N.Y. 1988), *aff'd* 865 F.2d 22 (2d Cir. 1988)) (internal quotations omitted) (alterations in original).

DISCUSSION

Plaintiff has satisfied the procedural requirements of Rule 24. First, Plaintiff stated the issues that she intends to present on appeal. *See Fed. R. App. P. 24(a)(1)(C).*

Second, Plaintiff has demonstrated her inability to pay or give security for fees and costs in the detail prescribed by Form 4. *See Fed. R. App. P. 24(a)(1)(A).* Plaintiff and her husband are both unemployed. ECF No. 51 at 2-3. Her husband is disabled and Plaintiff is his full-time

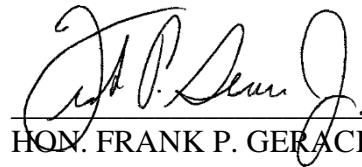
caregiver. *Id.* at 6. Although the couple owns a home with an estimated value of \$199,000, they have a \$138,000 mortgage on it which requires monthly payments of \$1,068. *Id.* at 2. They also own a vehicle which requires monthly payments of \$364. *Id.* at 5. Their only income is \$1,576 per month in disability payments to Plaintiff's husband, \$250 per month in public assistance, and \$500 per month in rent from the couple's adult daughter. *Id.* at 2. Plaintiff states that she has only \$419 in a checking account and her husband has only \$122 in a checking account. *Id.* at 3. Plaintiff's household's total monthly income of \$2,326 is only \$44 more than its total monthly expenses of \$2,282.

CONCLUSION

For the reasons stated, Plaintiff's Motion for Leave to Appeal *in forma pauperis* (ECF No. 51) is GRANTED. The Clerk of the Court is directed to send a copy of this order to the United States Court of Appeals for the Second Circuit.

IT IS SO ORDERED.

Dated: August 29, 2019
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court